ALTS
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

October 10, 2002

Ms. Marlene H. Dortch
Federal Communications Commission
445 12th Street, S.W., Room 1-A836
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation in CC Docket Nos. 01-338, 02-33

Dear Ms. Dortch:

Pursuant to Sections 1.1206(b)(2) of the Commission's Rules, this letter is to provide notice in the above-captioned docketed proceedings of an ex parte meeting on October 10, 2002, by Jonathan Askin of the Association for Local Telecommunications Services, Jason Oxman of Covad, Jeff Blumenfeld of Gray Cary, and Pat Donovan of Swidler Berlin. The parties met with Dan Gonzalez, Legal Advisor to Commissioner Martin. During the meeting, the parties generally discussed CLEC concerns regarding the above-captioned proceedings. More detailed discussions of the parties' positions are contained in ALTS' comments and reply comments in the above-captioned proceedings. The parties left the attached proposal with Mr. Gonzalez which sets forth a test to determine when sufficient competitive alternatives and processes exist such that transport need no longer be provided to requesting carriers on an unbundled basis.

The parties emphasized the need for the FCC to preserve the ILECs' unbundling obligations and the potential setbacks to competition and broadband deployment if the FCC were to disrupt the pro-competitive framework established by the Telecom Act and the FCC and state implementing rules. The parties stressed that CLECs are providing facts that show that the Bells still retain monopoly control over bottleneck facilities. CLECs must rely upon the Bells' loops and transport to reach customers. The facts show that access to unbundled loops and transport is critical to CLECs' ability to compete, and unbundling should still be required. The existing unbundling rules provide enormous benefits to consumers – lower prices, innovative voice and data services, etc. In fact, the CLECs make more innovative use of the ILECs' facilities than the ILECs themselves. The parties also noted that the FCC must adopt and enforce metrics for special access and UNE provisioning in order to stop ILEC anticompetitive provisioning practices and ensure that consumers have a fair choice among competing services. Current ILEC provisioning processes undermine CLECs' ability to compete. The parties also stressed the need for the FCC to seek Supreme Court review of the DC Circuit opinion in *USTA v. FCC*. The parties noted that the Appeals Court failed to give sufficient deference to the FCC which could jeopardize the FCC's regulatory authority in every area subject to FCC jurisdiction. Without a definitive statement from the Supreme Court, the list of unbundled network elements is going to be unstable, and subject to conflicting court decisions, for years. The industry needs judicial certainty.

If you have any questions about this matter, please contact me at 202-969-2587.

Respectfully submitted,
/s/
Jonathan Askin

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